

OPEN-END CREDIT

OVERVIEW

Examination review procedures for open-end credit have been segregated in the following way:

Credit cards issued by a financial institution that **is not** the creditor

Credit cards issued by a financial institution that **is** the creditor

Open-end credit other than credit cards and home equity lines of credit

Home equity lines of credit

In This Section

TOPIC	SEE PAGE:
DEFINITION(S)	B2-1
FINANCIAL INSTITUTION IS CREDIT CARD ISSUER, NOT CREDITOR	B2-2
FINANCIAL INSTITUTION IS CREDIT CARD ISSUER AND CREDITOR	B2-7
OPEN-END CREDIT OTHER THAN CREDIT CARDS AND HOME EQUITY LINES OF CREDIT	B2-19
HOME EQUITY LINES OF CREDIT	B2-26
WORKPAPER STANDARDS	B2-49
REFERENCES	B2-50

DEFINITION(S)

Open-end credit plans secured by the consumer's dwelling.

Home Equity Line of Credit

DEFINITION(S)
(cont'd)

**Open-End
Credit**

Open-end credit means consumer credit extended by a creditor under a plan in which:

The creditor reasonably contemplates repeated transactions

The creditor may impose a finance charge from time to time on an outstanding unpaid balance

The amount of credit that may be extended to the consumer during the term of the plan (up to any limit set by the creditor) is generally made available to the extent that any outstanding balance is repaid

**FINANCIAL
INSTITUTION
(FI) IS CREDIT
CARD (CC)
ISSUER, NOT
CREDITOR**

Use the following examination procedures to examine a financial institution which issues credit cards, but is not the creditor.

Determine whether the financial institution issues "charge cards" or "credit cards"

- A "credit card" refers to any card or other single credit device used from time to time to obtain credit. A periodic interest rate is applied to any outstanding balances.

Example: Mastercard, Visa

- A "charge card" refers to a card on any account for which no periodic rate is used to compute a finance charge. The terms governing a charge account generally require payment of the balance in full on the payment due date.

Example: American Express, Diners Club.

Refer to Section 226.2(a)(15).

Once it is determined what type of credit is being issued, follow the procedures detailed in this section noting that requirements vary for credit or charge cards.

**Before Account
Opening**

Truth In Lending (TIL)

1. Perform "General Truth in Lending Procedures" detailed in the Introduction to Approved Loans section of this manual.

**FI CC ISSUER,
NOT
CREDITOR
(cont'd)**

**Before Account
Opening
(cont'd)**

2. Determine that credit cards are issued only in response to oral or written requests, applications, or as renewals of or substitutes for accepted credit cards. (226.12(a))

NOTE: The disclosures must be accurate as of the mailing date and contain terminology consistent with that used in the disclosures under Sections 226.6 and 226.7. The terms annual percentage rate and finance charge need not be more conspicuous than other required disclosures.

3. Determine whether the financial institution furnishes, in a tabular format, on or with creditor-initiated direct mail credit card applications and solicitations, the following written disclosures:

NOTE: A credit card issuer shall disclose all applicable items listed under 3.a. through 3.j. below, except for item 3.g. A charge card issuer shall disclose the applicable items listed under 3.b., 3.d., and 3.g. through 3.j.

- a. The annual percentage rate (APR) or rates for purchases. The financial institution's disclosures must include each periodic rate that may be used to compute the finance charge on an outstanding balance for purchases, expressed as an APR (as determined by Section 226.14(b)). When more than one rate applies, the financial institution must disclose the range of balances to which each rate applies.

If the account has a variable-rate, determine that the financial institution has disclosed that fact and how the rate is determined

If the financial institution uses a margin with a variable-rate account, determine that it discloses the amount or range of the margin (for example, a value added to the index to compute an interest rate)

If the rate is variable, determine that the financial institution discloses an APR that was in effect within 60 days before the mailing. (If the initial rate is discounted, determine that the financial institution discloses an APR that would otherwise apply to the account, for example, a rate based on the index plus margin.)

(226.5a(b)(1))

**FI CC ISSUER,
NOT
CREDITOR
(cont'd)**

**Before Account
Opening
(cont'd)**

- b. Any annual or periodic fee that may be imposed for issuance or availability of a card, including a one-time membership fee, periodic membership fees, or fees based on account activity or inactivity. (226.5a(b)(2))
- c. Any minimum or fixed finance charge that could be imposed during a billing cycle. (226.5a(b)(3))
- d. Any transaction fee that may be imposed for the use of the card for purchases. (226.5a(b)(4))
- e. The length (or range) of any "grace period" using that term. The "grace period" refers to the date by which, or period within which, the borrower must repay the outstanding purchase balance to avoid a finance charge.

If there is no grace period, that fact must also be disclosed. If the length of the grace period varies, the card issuer may disclose the range of days, the minimum number of days, or the average number of days in the grace period, if the disclosure is identified as a range, minimum, or average. (226.5a(b)(5))
- f. An explanation of the balance computation method.

If the method used by the financial institution is one described in Section 226.5a(g), only the name of the method (for example, the "previous balance" method) is required to be disclosed. The explanation may appear outside the table if the table contains a reference to the explanation. In determining which balance computation method to disclose, the card issuer shall assume that credit extended for purchases will not be repaid within the grace period if any. (226.5a(b)(6))
- g. If applicable, a statement that charges incurred by use of the charge card are due when the periodic statement is received. (226.5a(b)(7))
- h. The amount (or range, if it varies from state to state) of any cash advance fee imposed for an extension of credit. This disclosure may be outside the table. (226.5a(b)(8))
- i. Any late payment charge (or range, if it varies from state to state). This disclosure may be outside the table. (226.5a(b)(9))

**FI CC ISSUER,
NOT
CREDITOR
(cont'd)**

**Before Account
Opening
(cont'd)**

- j. Any fee (or range, if it varies from state to state) that may be charged for exceeding the credit limit. This disclosure may be outside the table. (226.5a(b)(10))

(226.5a(c))

4. Determine if, with telephone applications and preapproved solicitations to open credit card or charge card accounts, the financial institution provides the consumer with either of the following:

- a. Oral disclosure of items 3.a. through 3.g. above.
- b. A written disclosure, if the financial institution does not impose an annual or periodic fee or does not impose the fee unless the consumer uses the card, within 30 days after the consumer requests the card, but in no event later than the delivery of the card, of the following:

The items under number 3. above, which should be accurate as of the mailing date, with items 3.a. through 3.g. in a tabular format

The fact that the consumer need not accept the card or pay any fee disclosed unless the consumer uses the card

(226.5a(d))

5. Determine if, with applications and solicitations to open credit card or charge card accounts made available to the public by means other than by mail or telephone (for example, applications in the form of "take-ones"), the financial institution discloses in writing any one of the following:

- a. On the application or solicitation (accurate as of the printing date):

The items under number 3. above, with items 3.a. through 3.g. in a tabular format (If the APR is variable, determine that the financial institution discloses a fully indexed rate used within 30 days before the printing date.)

The date that the required information was printed, including a statement that the information was accurate as of that date and is subject to change

**FI CC ISSUER,
NOT
CREDITOR
(cont'd)**

**Before Account
Opening
(cont'd)**

A statement that the consumer should contact the financial institution for any changes in the information disclosed

A toll-free telephone number or a mailing address for the consumer to use to obtain information regarding changes in required disclosures

- b. On or with the application or solicitation (with information accurate as of the time it is made available to the public):

The disclosures required by Section 226.6(a) through 226.6(c)

A statement that the consumer should contact the financial institution for any changes to the information disclosed

A toll-free telephone number or a mailing address for the consumer to use to obtain information regarding changes in the information disclosed

- c. On the application or solicitation, if the application or solicitation does not contain any information required to be disclosed under number 3 above:

A statement that costs are associated with the use of credit cards

A statement that the applicant may contact the financial institution to request disclosure of specific cost information by calling a toll-free number or by writing to an address specified in the application

A toll-free telephone number and a mailing address for the consumer to use to obtain cost information

(226.5a(e))

6. Determine that the financial institution (or its agent), in response to a consumer's request for cost information, discloses (orally or in writing) the required credit information to the consumer within 30 days of receiving the request for information. (226.5a(e)(4))

Credit Practices Rule

1. Determine that the financial institution provides the required co-signer

**FI CC ISSUER,
NOT
CREDITOR
(cont'd)**

**Before Account
Opening
(cont'd)**

Fair Credit Reporting Act

1. Determine that any credit reports contained in the loan files were requested and used only for the permissible purposes specified in the Fair Credit Reporting Act and for no other purposes. (607)

**FINANCIAL
INSTITUTION
(FI) IS CREDIT
CARD (CC)
ISSUER AND
CREDITOR**

Use the following examination procedures to examine a financial institution which issues credit cards and is also the creditor.

Determine whether the financial institution issues "charge cards" or "credit cards"

- A "credit card" refers to any card or other single credit device used from time to time to obtain credit. A periodic interest rate is applied to any outstanding balances.

Example: Mastercard, Visa

- A "charge card" refers to a card on any account for which no periodic rate is used to compute a finance charge. The terms governing a charge account generally require payment of the balance in full on the payment due date.

Example: American Express, Diners Club.

Refer to Section 226.2(a)(15).

Once it is determined what type of card is being issued, follow the procedures detailed in this section, noting that requirements vary for credit or charge cards.

**Before Account
Opening**

Truth In Lending (TIL)

1. Perform "General Truth in Lending Procedures" detailed in the Introduction to Approved Loans section of this manual.

**FI CC ISSUER
AND
CREDITOR
(cont'd)**

**Before Account
Opening
(cont'd)**

2. Determine that credit cards are issued only in response to oral or written requests, applications, or as renewals of or substitutes for accepted credit cards. (226.12(a))

NOTE: The disclosures must be accurate as of the mailing date and with terminology consistent with that used in the disclosures under Sections 226.6 and 226.7. The terms annual percentage rate and finance charge need not be more conspicuous than other required disclosures.

3. Determine whether the financial institution furnishes, in tabular format, on or with creditor-initiated direct mail applications and solicitations to open credit or charge card accounts, the following written disclosures:

NOTE: A credit card issuer shall disclose all applicable items listed under 3.a. through 3.j. below, except for item 3.g. A charge card issuer shall disclose the applicable items listed under 3.b., 3.d., and 3.g. through 3.j.

- a. The annual percentage rate (APR) or rates for purchases. The financial institution's disclosures must include each periodic rate that may be used to compute the finance charge on an outstanding balance for purchases, expressed as an APR (as determined by Section (226.14(b))). When more than one rate applies, the financial institution must disclose the range of balances to which each rate applies.

If the account has a variable-rate, determine that the financial institution has disclosed that fact and how the rate is determined

If the financial institution uses a margin with a variable-rate account, determine that it discloses the amount or range of the margin (for example, a value added to the index to compute an interest rate)

If the rate is variable, determine that the financial institution discloses an APR that was in effect within 60 days before the mailing (If the initial rate is discounted, determine that the financial institution discloses an APR that would otherwise apply to the account, for example, a rate based on the index plus margin.)

(226.5a(b)(1))

**FI CC ISSUER
AND
CREDITOR
(cont'd)**

**Before Account
Opening
(cont'd)**

- b. Any annual or periodic fee that may be imposed for issuance or availability of a card, including a one-time membership fee, periodic membership fees or fees based on account activity or inactivity. (226.5a(b)(2))
- c. Any minimum or fixed finance charge that could be imposed during a billing cycle. (226.5a(b)(3))
- d. Any transaction fee that may be imposed for the use of the card for purchases. (226.5a(b)(4))
- e. The length (or range) of any "grace period" using that term. The "grace period" refers to the date by which, or period within which, the borrower must repay the outstanding purchase balance to avoid a finance charge.

If there is no grace period, that fact must also be disclosed. If the length of the grace period varies, the card issuer may disclose the range of days, the minimum number of days, or the average number of days in the grace period, if the disclosure is identified as a range, minimum, or average. (226.5a(b)(5))

- f. An explanation of the balance computation method.

If the method used by the financial institution is one described in Section 226.5a(g), only the name of the method (for example, the "previous balance" method) is required to be disclosed. The explanation may appear outside the table if the table contains a reference to the explanation. In determining which balance computation method to disclose, the card issuer shall assume that credit extended for purchases will not be repaid within the grace period if any. (226.5a(b)(6))

- g. If applicable, a statement that charges incurred by use of the charge card are due when the periodic statement is received. (226.5a(b)(7))
- h. The amount (or range, if it varies from state to state) of any cash advance fee imposed for an extension of credit. This disclosure may be outside the table. (226.5a(b)(8))
- i. Any late payment charge (or range, if it varies from state to state). This disclosure may be outside the table. (226.5a(b)(9))

**FI CC ISSUER
AND
CREDITOR
(cont'd)**

**Before Account
Opening
(cont'd)**

- j. Any fee (or range, if it varies from state to state) that may be charged for exceeding the credit limit. This disclosure may be outside the table. (226.5a(b)(10))

(226.5a(c))

4. Determine if, with telephone applications and preapproved solicitations to open credit card or charge card accounts, the financial institution provides the consumer with either of the following:

- a. Oral disclosure of items 3.a. through 3.g. above.
- b. A written disclosure, if the financial institution does not impose an annual or periodic fee or does not impose the fee unless the consumer uses the card, within 30 days after the consumer requests the card, but in no event later than the delivery of the card, of the following:

The items under number 3. above, which should be accurate as of the mailing date, with items 3.a. through 3.g. in a tabular format

The fact that the consumer need not accept the card or pay any fee disclosed unless the consumer uses the card

(226.5a(d))

5. Determine if, with applications and solicitations to open credit card or charge card accounts made available to the public by means other than by mail or telephone (for example, applications in the form of "take-ones"), the financial institution discloses in writing any one of the following:

- a. On the application or solicitation (accurate as of the printing date):

The items under number 3. above, with items 3.a. through 3.g. in a tabular format (If the APR is variable, determine that the financial institution discloses a fully indexed rate used within 30 days before the printing date.)

The date that the required information was printed, including a statement that the information was accurate as of that date and is subject to change

**FI CC ISSUER
AND
CREDITOR
(cont'd)**

**Before Account
Opening
(cont'd)**

A statement that the consumer should contact the financial institution for any changes in the information disclosed

A toll-free telephone number or a mailing address for the consumer to use to obtain information regarding changes in required disclosures

- b. On or with the application or solicitation with information accurate as of the time it is made available to the public:

The disclosures required by Section 226.6(a) through 226.6(c) of Regulation Z

A statement that the consumer should contact the financial institution for any changes in the information disclosed

A toll-free telephone number or a mailing address for the consumer to use to obtain information regarding changes in the information disclosed

- c. On the application or solicitation, if the application or solicitation does not contain any information required to be disclosed under number 3 above:

A statement that costs are associated with the use of credit cards

A statement that the applicant may contact the financial institution to request disclosure of specific cost information by calling a toll-free number or by writing to an address specified in the application

A toll-free telephone number and a mailing address for the consumer to use to obtain cost information

(226.5a(e))

6. Determine that the financial institution (or its agent), in response to a consumer's request for cost information, discloses (orally or in writing) the required credit information to the consumer within 30 days of receiving the request for information. (226.5a(e)(4))

7. Determine, through a review of the financial institution's policies, procedures, and practices whether the financial institution provides appropriate disclosures for all of the following, as required by Sections 226.5a(b), (c) and (d) of Regulation Z:

**FI CC ISSUER
AND
CREDITOR
(cont'd)**

**Before Account
Opening
(cont'd)**

Creditor initiated direct mail applications and solicitations to open charge card accounts

Telephone applications and solicitations to open charge card accounts

Applications and solicitations made available to the general public to open charge card accounts

TIL – Initial Disclosure Statement

8. Determine when and how the financial institution furnishes initial disclosure statements to new account customers under every open-end credit plan offered by the financial institution.

9. Determine whether the financial institution furnishes the required disclosure statements before the first transaction is made under the plan(s). (226.5(b))

10. Compare an initial disclosure statement with the contractual agreement governing each plan to determine the disclosure's accuracy.

11. Determine that the initial disclosure statement provided before the first transaction contains the following information, as applicable:

- a. The circumstances under which a finance charge will be imposed and an explanation of how it will be determined. The initial disclosure must further provide an accurate description of when finance charges begin to accrue, including an explanation of whether any period exists within which any credit extended may be repaid without incurring a finance charge (commonly referred to as the "grace period"). (226.6(a)(1))
- b. A disclosure of each periodic rate that may be used to compute the finance charge, the range of balances to which it is applicable and the corresponding APR.

If a creditor is offering a variable-rate plan, the creditor shall also disclose:

The circumstances under which rate(s) may increase
Any limitations on the increase
The effect of an increase

**FI CC ISSUER
AND
CREDITOR
(cont'd)**

**Before Account
Opening
(cont'd)**

(226.5b(d)(12))

- c. An explanation of the method used by the financial institution to determine the balance on which the finance charge may be computed. (226.6(a)(3))
- d. An explanation of how the financial institution will determine the amount of any finance charge, including a description of how any finance charge, other than one derived by the application of a periodic rate to an outstanding balance, will be determined. (226.6(a)(4))
- e. A statement of the amount of any charge other than a finance charge, for example, an annual membership fee, or an explanation of how the charge will be determined. (226.6(a)(4))
- f. A statement of the fact that the financial institution will acquire a security interest in property purchased under the plan or in any other property identified by item or type. (226.6(c))
- g. A statement that outlines the consumer's rights and the financial institution's responsibilities:

Under Section 226.12(c) regarding the right of a cardholder to assert claims or defenses against a card issuer

Under Section 226.13, which defines and sets forth the procedures for the resolution of billing errors

The statement must be substantially similar to the statement found in Regulation Z, Appendix G.

(226.6(d))

Credit Practices Rule

- 1. Determine that the financial institution provides the co-signer disclosure statement to the co-signer prior to the time the co-signer becomes obligated for any fees or transactions on the account. (227.14(b)(2))

**FI CC ISSUER
AND
CREDITOR
(cont'd)**

**Before Account
Opening
(cont'd)**

2. Determine that the financial institution does not include the following prohibited contract provisions in contracts (or related documents) it originates, nor does it enforce such terms in contracts it acquires:

Confession of judgment
Waiver of statutory property exemption
Assignments of wages
Nonpossessory security interest in household goods

(227.13)

Fair Credit Reporting Act

1. Determine that any credit reports contained in the loan files were requested and used only for the permissible purposes specified in the Fair Credit Reporting Act and for no other purposes. (607)

**After Account
Opening**

Truth In Lending

1. If the financial institution imposes an annual fee, including any fee based on account activity or inactivity, determine whether:
- a. The financial institution provides renewal disclosures at least 30 days or one billing cycle, whichever is less, before the renewal date when the periodic statement containing the fee is first mailed or delivered.

NOTE: Alternatively, the financial institution may delay the notification until the mailing or delivery of the periodic statement on which the renewal fee is initially charged to the account if it meets the conditions under Section 226.9(e)(2).

- b. The renewal statements contain:

Items listed under "Before Account Opening" 3.a. through 3.g.

NOTE: Tabular format is not required.

**FI CC ISSUER
AND
CREDITOR
(cont'd)**

**After Account
Opening**

A statement as to how the cardholder may terminate credit availability under the account to avoid paying the renewal fee
(226.9(e)(1))

2. If the financial institution offers credit insurance, determine whether procedures are in place to ensure that, should the financial institution decide to change insurance providers:

Consumers are informed of any increase in rate or substantial decrease in coverage as a result of the change

Consumers are given an opportunity to discontinue the insurance

(226.9(f))

TIL – Periodic Statements

3. Determine that the financial institution made the following disclosures, as applicable, consistent with the initial disclosure statement furnished in connection with the accounts and the underlying contractual terms governing the plan(s):

- a. The outstanding balance in the account at the beginning of the billing cycle. (226.7(a))
- b. An identification of each transaction on or with each periodic statement which reflects the transaction, consistent with Section 226.8 regarding the proper identification of transactions. (226.7(b))
- c. The amount and date of any credit to the account. (The date need not be provided if a delay in crediting does not result in any finance or other charge.) (226.7(c))
- d. Each periodic rate used to compute the finance charge, the range of balances to which each applies and the corresponding APR.

Note, however:

A creditor is not required to adjust the range of balances disclosure to reflect the balance below which only a minimum charge applies

If no finance charge is imposed when the outstanding balance is less than a certain amount, no disclosure is required of that fact or of the balance below which no finance charge will be imposed

**FI CC ISSUER
AND
CREDITOR
(cont'd)**

**After Account
Opening (cont'd)**

If a variable-rate plan is involved, the creditor shall disclose the fact that the periodic rate(s) may vary

If different periodic rates apply to different types of transactions, the types of transactions to which each periodic rate applies must also be disclosed

(226.7(d))

- e. The balance amount to which each periodic rate was applied and an explanation of how that balance was determined. (If a balance amount was determined without first deducting all credits and payments, that fact and the amount of the credits and payments must be disclosed.) (226.7(e))

- f. The amount of any finance charge debited or added to the account during the billing cycle, using the term "finance charge".

The financial institution must individually identify and itemize the components of the finance charge to show:

The amount(s) due to the application of any periodic rates

The amount(s) of any other type of finance charge

NOTE: If there is more than one periodic rate, the amount of the finance charge attributable to each rate need not be separately itemized and identified.

(226.7(f))

- g. If a finance charge was imposed during the billing cycle, the APR(s) determined under Section 226.14 using the term "annual percentage rate". (226.7(g))
- h. The amounts, itemized and identified by type, of any charges other than finance charges debited to the account during the billing cycle. (226.7(h))
- i. The closing date of the billing cycle and the account balance on that date. (226.7(i))
- j. The date by which or period within which the new balance or any portion of it must be paid to avoid additional finance charges (the "grace period"). (226.7(j))

**FI CC ISSUER
AND
CREDITOR
(cont'd)**

**After Account
Opening**

- k. The address of the financial institution to be used for billing error notices.

Alternative: The address for billing error notices may be provided on a summary statement of billing rights substantially similar to the model form (G-4) found in Regulation Z, Appendix G. (226.7(k))

TIL – Subsequent Disclosure Requirements

4. Determine when and how the financial institution furnished the last statement of billing rights to customers.

The financial institution shall mail or deliver the billing rights statement required by Section 226.6(d) at least once per calendar year, at intervals of not less than six months nor more than 18 months, either to all consumers or to each consumer entitled to receive a periodic statement under Section 226.5(b)(2) for any one billing cycle

Alternative: The financial institution may use the short form notice, a statement substantially similar to that in found in Regulation Z, Appendix G, with each periodic statement. (226.9(a))

5. Review the financial institution's billing error resolution procedures, including the instructions, written or otherwise, received by personnel assigned responsibility for processing billing errors.

6. Review billing error complaints received by the institution for any evidence or indications that requirements of the billing error resolution procedures, including applicable time limits, were not followed. (226.13)

7. Determine if the financial institution made the necessary disclosures for supplemental credit devices and additional features as set forth under Section 226.9(b)(2)

8. If the financial institution changed the terms of any open-end credit accounts since the date of the previous compliance examination, determine whether the financial institution complied with the advance notice requirements. (226.9(c))

**FI CC ISSUER
AND
CREDITOR
(cont'd)**

**After Account
Opening**

TIL – Prompt Crediting of Payments	
9.	Determine where the financial institution receives payments and how they are processed.
10.	Determine that the financial institution credits payments as of the date of receipt, unless a delay in crediting does not result in the imposition of a finance or other charge. (226.10(a))
11.	Determine that the financial institution credits merchant refunds to customers' accounts within three business days of receipt. (226.12(e)(2))
12.	Determine that the financial institution credits any credit balances to consumer accounts, refunds such balances within seven business days of receipt of a written request, and refunds such balances in any event after remaining in an account more than six months. (226.11)
TIL – Special Credit Card Provisions	
13.	Determine if the financial institution is aware of and complies with the limits and conditions of cardholder liability for unauthorized use. The liability of a cardholder for unauthorized use of a credit card shall not exceed the lesser of \$50 or the amount of money, property, labor, or services obtained by unauthorized use before notification to the card issuer under Section 226.12(b)(3). (226.12(b))
14.	Determine if the financial institution is aware of a cardholder's right to assert against the financial institution claims and defenses which the cardholder could assert against a merchant and the limitations on that right. (226.12(c))
15.	Determine that the financial institution avoids reporting any disputed amount as delinquent before the dispute is settled or judgment is rendered. (226.12(c))
16.	Determine that the financial institution does not offset any credit card indebtedness against the deposit accounts of customers. (226.12(d))

**FI CC ISSUER
AND
CREDITOR
(cont'd)**

**After Account
Opening (cont'd)**

17. Determine that the financial institution promptly credits refunds. The financial institution shall, within 3 business days from receipt of a credit statement, credit the consumer's account with the amount of the refund. (226.12(e))

18. Review agreements between the financial institution and merchants for any illegal prohibition against the merchants offering discounts to cash customers or prohibited tie-in arrangements.

This can include requiring any person who honors the financial institution's credit card to open or maintain any account or obtain any other service not essential to the operation of the credit card plan from the card issuer or any other person, as a condition of participation in a credit card plan. (226.12(f))

**OPEN-END
CREDIT
OTHER THAN
CREDIT
CARDS (CC)
AND HOME
EQUITY LINES
OF CREDIT
(HELC)**

**Before Account
Opening**

The following procedures are for open-end credit other than credit cards or home equity lines of credit. This typically would include overdraft protection lines of credit.

Truth in Lending (TIL)

1. Perform "General Truth in Lending Procedures" detailed in the Introduction to Approved Loans section of this manual.
2. Determine when and how the financial institution furnishes initial disclosure statements to new account customers under every open-end credit plan offered by the financial institution.
3. Compare an initial disclosure statement furnished under each plan with the contractual terms governing the plan.

Credit Practices Rule

1. Determine that the financial institution provides the co-signer disclosure statement to the co-signer prior to the time the co-signer becomes obligated for any fees or transactions on the account. (227.14(b)(2))

**OPEN-END
CREDIT
OTHER THAN
CC AND HELC
(cont'd)**

**Before Account
Opening (cont'd)**

2. Determine that the financial institution does not include the following prohibited contract provisions in contracts (or related documents) it originates, nor does it enforce such terms in contracts it acquires:

- Confession of judgment
- Waiver of statutory property exemption
- Assignment of wages
- Nonpossessory security interest in household goods

(227.13)

Fair Credit Reporting

1. Determine that any credit reports contained in the loan files were requested and used only for the permissible purposes specified in the Fair Credit Reporting Act and for no other purposes. (607)

**After Account
Opening**

Truth in Lending

TIL – Initial Disclosure Statement

1. Determine that the financial institution provides the initial disclosure statement before the first transaction and that the disclosure contains the following terms, as applicable:
 - a. The circumstances under which a finance charge will be imposed and an explanation of how it will be determined. The initial disclosure statement must further provide an accurate description of when finance charges begin to accrue, including an explanation of whether any period exists within which any credit extended may be repaid without incurring a finance charge. (226.6(a)(1))
 - b. A disclosure of each periodic rate that may be used to compute the finance charge, the range of balances to which it is applicable and the corresponding APR.

**OPEN-END
CREDIT
OTHER THAN
CC AND HELC
(cont'd)**

**After Account
Opening (cont'd)**

If a creditor is offering a variable-rate plan, the creditor shall also disclose:

The circumstances under which rate(s) may increase
Any limitations on the increase
The effect of an increase

(226.5b(d)(12))

- c. An explanation of the method used to determine the balance on which the finance charge may be computed. (226.6(a)(3))
- d. An explanation of how the financial institution will determine the amount of any finance charge, including a description of how any finance charge, other than one derived by the application of a periodic rate, will be determined. (226.6(a)(4))
- e. A statement of the amount of any charge other than a finance charge, for example, an annual membership fee, or an explanation of how the charge will be determined. (226.6(a)(4))
- f. A statement of the fact that the financial institution will acquire a security interest in property purchased under the plan or in any other property identified by item or type. (226.6(c))
- g. A statement that outlines the consumer's rights and the financial institution's responsibilities:

The right of a cardholder to assert claims or defenses against a card issuer (226.12(c))

The procedure for the resolution of billing errors (226.13)

The statement must be substantially similar to the statement found in Regulation Z, Appendix G.

(226.6(d))

- 2. Review copies of periodic statements recently furnished to customers under each open-end credit plan offered by the financial institution. (The copies should reflect all the various types of transactions and charges possible under each different plan(s).)

**OPEN-END
CREDIT
OTHER THAN
CC AND HELC
(cont'd)**

**After Account
Opening (cont'd)**

TIL – Periodic Statements

3. Determine that the financial institution made the following disclosures, as applicable, consistent with the initial disclosure statement furnished in connection with the accounts and the underlying contractual terms governing the plan(s):

- a. The outstanding balance in the account at the beginning of the billing cycle. (226.7(a))
- b. An identification of each transaction on or with each periodic statement. See Section 226.8 regarding the proper identification of transactions. (226.7(b))
- c. The amount and date of any credit to the account. (The date need not be provided if a delay in crediting does not result in any finance or other charge.) (226.7(c))
- d. Each periodic rate used to compute the finance charge, the range of balances to which each applies, and the corresponding APR.

Note, however:

A creditor is not required to adjust the range of balances disclosure to reflect the balance below which only a minimum charge applies

If no finance charge is imposed when the outstanding balance is less than a certain amount, no disclosure is required of that fact or of the balance below which no finance charge will be imposed

If a variable-rate plan is involved, the creditor shall disclose the fact that the periodic rate(s) may vary

If different periodic rates apply to different types of transactions, the types of transactions to which each periodic rate applies must also be disclosed

(226.7(d))

- e. The balance amount to which each periodic rate was applied and an explanation of how that balance was determined.

If a balance amount was determined without first deducting all credits and payments, that fact and the amount of the credits and payments must be disclosed. (226.7(e))

**OPEN-END
CREDIT
OTHER THAN
CC AND HELC
(cont'd)**

**After Account
Opening (cont'd)**

- f. The amount of any finance charge debited or added to the account during the billing cycle, using the term "finance charge".

The financial institution must individually identify and itemize the components of the finance charge to show:

The amount(s) due to the application of any periodic rates

The amount(s) of any other type of finance charge

(226.7(f))

NOTE: If there is more than one periodic rate, the amount of the finance charge attributable to each rate need not be separately itemized and identified.

- g. If a finance charge was imposed during the billing cycle, the APR(s) determined under Section 226.14 using the term "annual percentage rate". (226.7(g))
- h. The amounts, itemized and identified by type, of any charges other than finance charges debited to the account during the billing cycle. (226.7(h))
- i. The closing date of the billing cycle and the account balance on that date. (226.7(i))
- j. The date by which or period within which the new balance or any portion of it must be paid to avoid additional finance charges (the "grace period"). (226.7(j))
- k. The address of the financial institution to be used for billing error notices.

Alternative: The address for billing error notices may be provided on a summary statement of billing rights substantially similar to the model form (G-4) found in Regulation Z, Appendix G. (226.7(k))

TIL – Subsequent Disclosure Requirements

4. Determine when and how the financial institution furnished the last statement of billing rights to customers.

<p>OPEN-END CREDIT OTHER THAN CC AND HELC (cont'd)</p> <p>After Account Opening (cont'd)</p>	<p>The financial institution shall mail or deliver the billing rights statement required by Section 226.6(d) at least once per calendar year, at intervals of not less than six months nor more than 18 months, either to all consumers or to each consumer entitled to receive a periodic statement under Section 226.5(b)(2) for any one billing cycle.</p> <p>Alternative: The financial institution may use the short form notice, a statement substantially similar to that found in Regulation Z, Appendix G, with each periodic statement. (226.9(a))</p>
	<p>5. Review the financial institution's billing error resolution procedures, including the instructions, written or otherwise, received by personnel assigned responsibility for processing billing errors. (226.13)</p>
	<p>6. Review billing error complaints received by the institution for any evidence or indications that the requirements of the billing error resolution procedures, including applicable time limits, were not followed. (226.13)</p>
	<p>7. Determine if the financial institution made the necessary disclosures for supplemental credit devices and additional features as set forth under Section 226.9(b)(2).</p>
	<p>8. If the financial institution changed the terms of any open-end credit accounts since the date of the previous compliance examination, determine whether the financial institution complied with the advance notice requirements. (226.9(c))</p>
	<p>TIL – Prompt Crediting of Payments</p>
	<p>9. Determine where the financial institution receives payments and how they are processed.</p>
	<p>10. Determine that the financial institution credits payments as of the date of receipt, unless a delay in crediting does not result in the imposition of a finance or other charge. (226.10(a))</p>
	<p>11. Determine that the financial institution credits merchant refunds to customers' accounts within three business days of receipt. (226.12(e)(2))</p>

**OPEN-END
CREDIT
OTHER THAN
CC AND HELC
(cont'd)**

12. Determine that the financial institution credits any credit balances to consumer accounts, refunds such balances within seven business days of receipt of a written request, and refunds such balances in any event after remaining in an account more than six months. (226.11)

**After Account
Opening (cont'd)**

HOME EQUITY LINES OF CREDIT

The procedures found in this part apply to open-end credit plans secured by the consumer's dwelling, referred to as home equity lines of credit (HELCs). Under Regulation Z, a HELC is an open-end consumer credit transaction secured by the consumer's dwelling. For the purposes of Section 226.5b, the provisions of Regulation Z governing home equity loans, a "dwelling" includes not only a principal residence, but a vacation home, a second home, or any other residential structure containing one to four units.

Refer to the Official Staff Commentary to Regulation Z, Part 226.2(a)(19).

The examiner should determine whether the financial institution offers HELCs before beginning these procedures.

At Application/ Within 3 Business Days

Truth in Lending (TIL)	
<p><i>NOTE: For the purposes of this section, an annual percentage rate (APR) is the annual percentage rate corresponding to the periodic rate as determined under Section 226.14(b) of Regulation Z.</i></p>	
1.	Perform "General Truth in Lending Procedures" detailed in the Introduction to Approved Loans section of this manual.
2.	<p>Determine whether the financial institution delivers, at the time a HELC application is provided to the consumer (or within three business days of receiving an application in the case of applications contained in publications or when the application is received by telephone or through a third party), the home equity brochure published by the Federal Reserve Board or a suitable substitute. (226.5b(e))</p> <p><i>NOTE: In the case of a federally related mortgage loan involving an open-end credit plan, as defined in Section 226.2(a)(20) of Regulation Z, a lender or mortgage broker that provides the borrower with a copy of the brochure entitled "When Your Home is On the Line; What You Should Know About Home Equity Lines of Credit," or any successor brochure issued by the Board of Governors of the Federal Reserve System, is deemed to be in compliance with Section 3500.6 which requires the lender to provide a copy of the special information booklet (SIB) to applicants for a federally related mortgage. Examiners should cite the violation for Regulation Z and RESPA if the required brochure is not provided. If only the SIB is provided, a violation of Regulation Z would be cited.</i></p>

**HOME EQUITY
LINES OF
CREDIT
(cont'd)**

**Within 3
Business Days of
Receipt of a
Written
Application**

Real Estate Settlement Procedures Act (RESPA)

NOTE: In the case of a federally related mortgage loan involving an open-end line of credit (home-equity plan) covered under the Truth in Lending Act and Regulation Z, a lender or mortgage broker that provides the borrower with the disclosures required by Section 226.5b of Regulation Z at the time the borrower applies for such a loan shall be deemed to satisfy the requirements of RESPA Section 3500.7 regarding good faith estimates. Examiners should cite the violation for Regulation Z if the disclosures under Section 226.5b of Regulation Z is not provided.

The following RESPA requirements should apply only if the lender is not required to comply with Regulation Z.

1. Determine whether the financial institution provides a good faith estimate (GFE) of closing costs within three business days after receipt of a written application.

Compare the GFE to the HUD-1 or HUD-1A to ensure estimates provided were reasonable

Determine whether the GFE was disclosed in the required format

(3500.7(a), 3500.7(c), and 3500.7(d))

2. Determine, through review of the financial institution's GFEs and discussions with the financial institution's management, whether the financial institution requires the borrower to use the services of a particular individual or firm for settlement services as defined in Section 3500.2.

If a particular settlement service is required, ensure that the financial institution provides the borrower with the following information on the GFE:

- a. A statement that the use of the particular provider is required and that the cost estimate is based on the charges of the designated provider.
- b. The name, address, and telephone number of each provider.
- c. Describe the nature of any relationship between each such provider and the financial institution (for example, "X is a depositor of the lender," "X has performed 60% of the lender's settlements in the past year").

**HOME EQUITY
LINES OF
CREDIT
(cont'd)**

**Within 3
Business Days of
Receipt of a
Written
Application
(cont'd)**

For purposes of the above paragraph, a "relationship" exists if:

The provider is an associate of the financial institution, as defined in 3500.15(c)(1)

The provider has maintained an account with the financial institution or had an outstanding loan or credit arrangement with the financial institution within the last 12 months

The financial institution has repeatedly used or required borrowers to use the services of the provider within the last 12 months

With the exception of a provider that is the financial institution's:

Chosen attorney
Credit reporting agency
Appraiser

If the financial institution is in a controlled business relationship, as defined in 3500.15, with a provider, the financial institution may not require use of that provider.

(3500.7(e))

3. Determine if the financial institution maintains a controlled list of required providers (five or more for each individual service) or relies on a list maintained by others.

If a list is utilized, and at the time of application the financial institution has not yet decided which provider will be selected from that list, then the financial institution may satisfy the requirements of Section 3500.7(e) if the institution:

- a. Provides the borrower with a written statement that the financial institution will require a particular provider from a lender controlled or approved list.
- b. Provides the borrower in the GFE the range of costs for the required provider(s), and provides the name of the specific provider and the actual cost on the HUD-1 or HUD-1A.
(3500.7(e)(4)).

**HOME EQUITY
LINES OF
CREDIT
(cont'd)**

**Before Account
Opening/At or
Before Closing**

Truth in Lending (TIL)

NOTE: Disclosures 1.a. through 1.h. below must precede all other disclosures.

The required disclosures shall be made clearly and conspicuously and shall be grouped together and segregated from all unrelated information. The disclosures may be provided on the application form or on a separate form

When the APR is disclosed with a number, it must be more conspicuous than other required disclosures

Refer to the Official Staff Commentary to Regulation Z.

1. Determine whether the financial institution furnishes, on or with a HELC application, segregated from all other non-related information, and at the time the application is provided to the consumer (or within three business days of receiving an application in the case of applications contained in publications or when the application is received by telephone or through a third party), the following written disclosures, as applicable:
 - a. A statement that the consumer should retain a copy of the disclosures. (226.5b(d)(1))

NOTE: This statement need not be included if the disclosures are in a form that the consumer can keep. See Official Staff Commentary to Regulation Z, Section 226.5b(d)(1).
 - b. The time by which an application must be submitted to obtain the specific terms disclosed. (226.5b(d)(2)(i))
 - c. Identification of any disclosed term that is subject to change before the plan opens. (226.5b(d)(2)(i))
 - d. That the consumer may receive a refund of all fees paid in connection with the plan if the consumer elects not to enter into the plan because any of the terms of the plan (other than index fluctuations in a variable-rate plan) change before the agreement is final. (226.5b(d)(2)(ii))
 - e. The fact that the consumer's dwelling secures the HELC. (226.5b(d)(3))
 - f. That in the event of default, the loss of the dwelling may occur. (226.5b(d)(3))

**HOME EQUITY
LINES OF
CREDIT
(cont'd)**

**Before Account
Opening/At or
Before Closing
(cont'd)**

- g. The creditor's right, under certain conditions, to:

Terminate the plan, require immediate repayment in a single payment and impose additional fees upon termination

Prohibit additional extensions of credit

Reduce the credit limit

Implement certain changes in the plan as specified in the initial agreement

(226.5b(d)(4)(i))

- h. A notice that the consumer may receive, on request, the conditions under which the actions listed in 1.g. may occur.

NOTE: This disclosure need not be made if the financial institution elects to provide a written list of the conditions, with or separate from the HELC disclosures, at the time the application is provided to the consumer.

Determine whether the financial institution provides, as soon as reasonably possible after requested by the consumer, a list of the conditions

(226.5b(d)(4)(ii))

- i. The payment terms (if terms for draw and repayment period are different, the terms for each must be disclosed, as applicable), including:

The length of the draw period and any repayment period

NOTE: See Official Staff Commentary regarding length of the plan.
(226.5b(d)(5)(i))

An explanation of how the minimum periodic payment will be computed

The timing of periodic payments

If the periodic payment repays less than the balance or does not reduce principal (for example, interest only payments), a statement of that fact and that a balloon payment may or will result

**HOME EQUITY
LINES OF
CREDIT
(cont'd)**

**Before Account
Opening/At or
Before Closing
(cont'd)**

An example, based on a \$10,000 balance and a recent APR showing:

- The minimum periodic payment
- Any balloon payment
- The time to pay off the balance

If different payment terms may apply to the draw and any repayment period, or if different payment terms may apply within either period, the disclosures shall reflect the different payment terms.

(226.5b(d)(5))

NOTE: A recent APR for fixed-rate HELCs is one used within the previous 12 months. A recent APR for variable-rate HELCs is the last rate disclosed in the 15-year historical example, or a more recent rate (but not including any discounted rate).

- j. For fixed-rate HELCs, a recent corresponding APR (or APRs if more than one rate is imposed) and a statement that each disclosed APR does not include costs other than interest.

(226.5b(d)(6))

- k. An itemization of any fees imposed by the financial institution (in dollars or as a percentage) to open, use or maintain the plan and when such fees are payable. (226.5b(d)(7))

- l. A good faith estimate (as a single dollar amount or range) of any fees that might be imposed by third parties to open the account. (226.5b(d)(8))

- m. A statement that the consumer may receive, on request, a good faith itemization of third party fees. (226.5b(d)(8))

NOTE: This disclosure need not be made if the financial institution elects to provide a written list of the conditions, with or separate from the HELC disclosures, at the time the application is provided to the consumer.

Determine whether the statement provides, as soon as reasonably possible after requested by the consumer, an itemization of third party fees to open the account

- n. A statement that negative amortization may occur and negative amortization increases the principal balance and reduces the consumer's equity in the dwelling. (226.5b(d)(9))

**HOME EQUITY
LINES OF
CREDIT
(cont'd)**

**Before Account
Opening/At or
Before Closing
(cont'd)**

- o. Transaction requirements under the plan, including any:

Limitations on the number of extensions of credit that may be obtained during any time period

Limitations on the amount of credit that may be obtained during any time period

Minimum outstanding balance requirements, stated as a dollar amount or percentage

Minimum draw requirements, stated as a dollar amount or percentage

(226.5b(d)(10))

- p. A statement that the consumer should consult a tax advisor if further information regarding the deductibility of interest and charges under the plan is desired. (226.5b(d)(11))

- q. For variable-rate HELCs, the following disclosures, as applicable:

NOTE: This variable-rate information need not be included with the segregated disclosures.

A statement that the APR, payment or term may change (226.5b(d)(12)(i))

The fact that the APR excludes costs other than interest (226.5b(d)(12)(ii))

Identification of the index used to make rate adjustments and a source of information about the index (226.5b(d)(12)(iii))

An explanation of how the APR will be determined, including an explanation of how the index is adjusted, such as by the addition of a margin (the specific amount of any margin is not required to be disclosed) (226.5b(d)(12)(iv))

A statement that the consumer should request information on the current index value, margin, discount, premium or APR (226.5b(d)(12)(v)) and Official Staff Commentary to Regulation Z

The fact that the initial rate is not based on the index and margin used to make later rate adjustments and the time period the initial rate will be in effect (commonly called the "discounted rate"), if applicable (226.5b(d)(12)(vi))

**HOME EQUITY
LINES OF
CREDIT
(cont'd)**

**Before Account
Opening/At or
Before Closing
(cont'd)**

The frequency of APR changes (for example, monthly or quarterly) (226.5b(d)(12)(vii))

Rules relating to changes to the index, APR and payment amount, including information on payment limitations, negative amortization, and carryover (226.5b(d)(12)(viii))

The lifetime rate cap (Section 226.30) for each payment option and the amount of any annual (or more frequent) caps, or a statement that there is no annual limitation (226.5b(d)(12)(ix))

The minimum payment required (for both the draw and repayment periods) when the maximum APR is in effect for a \$10,000 balance and the earliest date or time when the maximum APR may be imposed (226.5b(d)(12)(x))

NOTE: The maximum APR is assumed to be in effect immediately when determining the minimum payment. In disclosing how long it will take to reach the maximum APR under the plan, the initial rate should be the value of the index plus margin as reflected in the last year of the 15-year table, or a more recent rate. The financial institution should take into account any discounted or premium rate when determining the initial rate and should factor in any rate limitations when computing how long it will take to reach the maximum rate.

A historical example based on a \$10,000 extension of credit, reflecting all significant plan terms (for example, an initial discounted rate or any rate limitations) and showing how the APR and the periodic payment would have been affected during the most recent 15 years (to the extent available) by changes in the index, implemented according to the terms of the plan (226.5b(d)(12)(xi))

NOTE: If the length of the plan is less than 15 years, index values and APRs must be shown for 15 years but payments need only be shown for as long as the plan lasts.

A statement that rate information shall be provided on or with each periodic statement (226.5b(d)(12)(xii))

**HOME EQUITY
LINES OF
CREDIT
(cont'd)**

**Before Account
Opening/At or
Before Closing
(cont'd)**

2. Determine that the financial institution provides a right of rescission notice for loans secured by a primary residence other than for initial purchase.

A loan to acquire a principal dwelling and make improvements to that dwelling is exempt if treated as one transaction. The notice shall be on a separate document that identifies the transaction and must clearly and conspicuously disclose the following:

- a. The retention or acquisition of a security interest in the consumer's principal dwelling.
- b. The consumer's right to rescind the transaction.
- c. How to exercise the right to rescind, with a form for that purpose, designating the address of the creditor's place of business.
- d. The effects of rescission.
- e. The date the rescission period expires.

(226.23(a)) and (226.23(b))

3. Determine that the financial institution provides two copies of the right of rescission notice and one copy of the TIL disclosure to each consumer entitled to rescind. (226.23(b))

4. Determine that the financial institution did not disburse any money other than in escrow, performed no services, and delivered no materials before the rescission period expired (three business days, including Saturdays), provided the consumer did not legitimately waive their right to rescind. (226.23(c))

5. Determine if any consumers modified or waived their right to rescind.

If the right to rescind has been modified or waived, determine that the waivers were dated, signed by all consumers entitled to rescind, and describe a bona fide personal financial emergency. Printed forms for the purpose of exercising the right of rescission are prohibited. (226.23(e))

**HOME EQUITY
LINES OF
CREDIT
(cont'd)**

**Before Account
Opening/At or
Before Closing
(cont'd)**

6. Determine whether the financial institution collects only refundable fees, if any, from the consumer before the end of three business days from delivering the disclosures and brochure (six days from the date of mailing, if mailed). (226.5b(h))
7. Determine if the financial institution refunds any fees that it collects from the consumer if the consumer rejects the plan within three business days after receiving the disclosures (even if there is no change in the disclosed terms). Neither a creditor nor any other person may impose a nonrefundable fee in connection with an application until three business days after the consumer receives the required disclosures and brochure. (226.5b(h))
8. Determine whether the financial institution refunds all fees when a consumer rejects the plan because a disclosed term changes (other than a change due to fluctuation in the index) before the plan is opened. The creditor shall refund all fees when the above conditions apply. (226.5b(g))

Flood Insurance

NOTE: Until the PROPOSED RULE (dated 10/18/95) is finalized, examiners should continue to use existing examination procedures and cite violations under the present Part 339.

1. Ensure the financial institution used the standard flood hazard determination form when determining whether or not the securing improved real estate or mobile home is or will be located in a special flood hazard area in which flood insurance is available under the Act. A completed copy of the flood hazard determination form shall be retained by the financial institution for the period of time the loan is owned. (339.6) **(Proposed Rule)**
2. Ensure the financial institution provided the required written notice to the borrower not later than ten days before the closing of the transaction or the commitment date, whichever is later, advising the borrower that the improved real estate or mobile home securing the loan is in a flood hazard area and whether or not federal disaster relief assistance will be available. **(Proposed Rule)**

**HOME EQUITY
LINES OF
CREDIT
(cont'd)**

**Before Account
Opening/At or
Before Closing
(cont'd)**

Ensure the contents of the notice meets the requirements of Section 339.9(b) and contains language substantially similar to that in Appendix A to Part 339. **(Proposed Rule)**

3. Ensure the financial institution did not make, increase, extend, or renew any designated loan unless the securing properties are covered by flood insurance for the term of the loan. The amount of insurance must be at least equal to the outstanding principal balance of the loan or the maximum limit of coverage made available for the particular type of property under the Act, whichever is less. (339.3) **(Proposed Rule)**

Flood insurance rules require that only the value of the improvements be insured; therefore, consideration should be given to the value of the land when reviewing flood insurance amounts.

Also, when reviewing flood insurance coverage amounts for properties involving master policies, coverage amounts for each unit should be calculated. Per unit amounts should be reviewed for sufficiency with the loan amount. Shortages in coverage amounts should be eliminated by an individual policy.

(This frequently involves loans to individual condominium unit owners where flood insurance coverage is provided under a master policy in the name of the condo association.)

Flood insurance coverage is required for improved real estate, despite the location (height) of specific property, if the property is located in a special flood hazard area. For example, a 15th floor apartment requires the same coverage as a 1st floor apartment, provided all else remains the same.

4. The lender must also notify the borrower that flood insurance will be obtained by the financial institution, at cost to the borrower, if the borrower fails to purchase the insurance within 45 days after notification. (339.7) **(Proposed Rule)**

5. Determine whether the financial institution charges borrowers a "reasonable" fee for making a determination that flood insurance is required. (339.8) **(Proposed Rule)**

**HOME EQUITY
LINES OF
CREDIT
(cont'd)**

**Before Account
Opening/At or
Before Closing
(cont'd)**

6. Determine that flood insurance premiums are escrowed, as required, if a financial institution also requires the escrow of taxes, insurance premiums, fees or any other charges for a loan that is consummated and secured by residential improved real estate or a mobile home. (339.5) **(Proposed Rule)**

*NOTE: In the event of a flood insurance claim, FEMA (Federal Emergency Management Agency) makes the proceeds check payable to **all lienholders** and the borrower. This action is taken even if the first lienholder **did not** require flood insurance when the first mortgage was made.*

For example, a second lienholder requires a borrower to purchase flood insurance to cover the amount of its mortgage (a home equity line in the amount of \$20,000). In the event of a flood, FEMA would make the proceeds check payable to the first and second lienholders as well as the borrower. Therefore, the first lienholder would share the \$20,000 insurance proceeds even though it failed to have the borrower purchase flood insurance at the time the first mortgage was made. The parties involved would determine how the proceeds are allocated.

Equal Credit Opportunity

1. Determine that the financial institution provides notice of the right to receive a copy of the appraisal to the consumer, if the financial institution does not routinely provide appraisals as a course of business.

Delivery of the appraisal should generally occur within 30 days of receipt of an applicant's request, receipt of the report, or receipt of reimbursement from the applicant for the report, whichever is last to occur. (202.5a(2)(ii))

Credit Practices Rule

1. Determine that the financial institution provides the co-signer disclosure statement to the co-signer prior to the time the co-signer becomes obligated for any fees or transactions on the account. (227.14(b)(2))

**HOME EQUITY
LINES OF
CREDIT
(cont'd)**

**Before Account
Opening/At or
Before Closing
(cont'd)**

2. Determine that the financial institution does not include the following prohibited contract provisions in contracts (or related documents) it originates, nor are such terms enforced in contracts it acquires:

- Confession of judgement
- Waiver of statutory property exemption
- Assignment of wages
- Nonpossessory security interest in household goods

(227.13)

Fair Credit Reporting Act

1. Determine that any credit reports contained in the loan files were requested and used only for the permissible purposes specified in the Fair Credit Reporting Act and for no other purposes. (607)

**After Account
Opening**

Truth in Lending (TIL)

TIL – Initial Disclosure Statement

1. Determine that the financial institution provides the initial disclosure statement before the first transaction and that the disclosure contains the following terms, as applicable:
 - a. The circumstances under which a finance charge will be imposed and an explanation of how it will be determined. The initial disclosure statement must further provide an accurate description of when finance charges begin to accrue, including an explanation of whether any period exists within which any credit extended may be repaid without incurring a finance charge. (226.6(a)(1))
 - b. A disclosure of each periodic rate that may be used to compute the finance charge, the range of balances to which it is applicable and the corresponding APR. (226.6(a)(2))

**HOME EQUITY
LINES OF
CREDIT
(cont'd)**

**After Account
Opening (cont'd)**

If a creditor is offering a variable-rate plan, the creditor shall also disclose:

The circumstances under which the rate(s) may increase
Any limitations on the increase
The effect of an increase

(226.5b(d)(12))

- c. An explanation of the method used to determine the balance on which the finance charge may be computed. (226.6(a)(3))
- d. An explanation of how the financial institution will determine the amount of any finance charge, including a description of how any finance charge, other than one derived by the application of a periodic rate, will be determined. (226.6(a)(4))
- e. A statement of the amount of any charge other than a finance charge, for example, an annual membership fee, or an explanation of how the charge will be determined. (226.6(a)(4))
- f. A statement of the fact that the financial institution will acquire a security interest in property purchased under the plan or in any other property identified by item or type. (226.6(c))
- g. A statement that outlines the consumer's rights and the financial institution's responsibilities:

The right of a cardholder to assert claims or defenses against a card issuer (226.12(c))

The procedure for the resolution of billing errors (226.13)

The statement must be substantially similar to the statement found in Regulation Z, Appendix G.

(226.6(d))

- 2. Review copies of periodic statements recently furnished to customers under each open-end credit plan offered by the financial institution. The copies should reflect all the various types of transactions and charges possible under each different plan(s).

**HOME EQUITY
LINES OF
CREDIT
(cont'd)**

**After Account
Opening (cont'd)**

3. Determine whether the financial institution provides with the traditional open-end credit disclosures that are given before the first transaction, the following written disclosures, as applicable (in a form that the consumer may keep):
 - a. A separate list or other notification of the conditions under which the financial institution may:
 - Terminate the plan, require immediate payment of the outstanding balance in full in a single payment, and impose fees upon termination
 - Prohibit additional extensions of credit
 - Reduce the credit limit
 - Implement certain changes in the plan as specified in the initial agreement
 - (226.6(e)(1))
 - b. The payment terms (if terms for draw and repayment period are different, the terms for each must be disclosed, as applicable), including:
 - The length of the draw period and any repayment period
 - An explanation of how the minimum periodic payment will be computed
 - The timing of periodic payments
 - If the periodic payment repays less than the balance or does not reduce principal (for example, interest only payments), a statement of that fact and that a balloon payment may or will result, as applicable
 - (226.6(e)(2))
 - c. A statement, if applicable, that negative amortization might occur, which increases the principal balance and reduces the consumer's equity in the dwelling. (226.6(e)(3))
 - d. A statement of any transaction requirements under the plan, including any:
 - Limitations on the number of extensions of credit that may be obtained during any time period

**HOME EQUITY
LINES OF
CREDIT
(cont'd)**

**After Account
Opening (cont'd)**

Limitations on the amount of credit that may be obtained during any time period

Minimum outstanding balance requirements, stated as a dollar amount or percentage

Minimum draw requirements, stated as a dollar amount or percentage

(226.6(e)(4))

e. A statement that the consumer should consult a tax advisor regarding the deductibility of interest and charges under the plan. (226.6(e)(5))

f. A statement that the APR does not include costs other than interest. (226.6(e)(6))

g. An example, based on a \$10,000 outstanding balance using a recent APR showing the minimum periodic payment, any balloon payment, and the time to repay the balance. (226.6(e)(7))

NOTE: This redisclosure need not be made if it was provided with the application in a form the consumer could keep and included a representative payment example for the category of payment option chosen by the consumer.

h. For variable-rate HELCs:

The rules relating to changes to the index, APR and payment amount, including information on payment limitations, negative amortization and carryover

The minimum payment required (for both the draw and repayment periods) when the maximum APR is in effect for a \$10,000 balance and when the maximum APR may be imposed

NOTE: This redisclosure need not be made if it was provided with the application in a form the consumer could keep and included a representative payment example for the category of payment option chosen by the consumer.

A table based on a \$10,000 extension of credit, reflecting all significant plan terms and showing how the APR and the minimum periodic payment amount would have been affected during the most recent 15 years by changes in the index

**HOME EQUITY
LINES OF
CREDIT
(cont'd)**

**After Account
Opening (cont'd)**

NOTE: This redisclosure need not be made if it was provided with the application in a form the consumer could keep and included a representative payment example for the category of payment option chosen by the consumer.

A statement that rate information will be provided on or with each periodic statement

(226.6(e)(7))

TIL – Periodic Statements

4. Determine that the financial institution made the following disclosures, as applicable, consistent with the initial disclosure statement furnished in connection with the accounts and the underlying contractual terms governing the plan(s):

- a. The outstanding balance in the account at the beginning of the billing cycle. (226.7(a))
- b. An identification of each transaction on or with each periodic statement which reflects the transaction, consistent with Section 226.8 regarding the proper identification of transactions. (226.7(b))
- c. The amount and date of any credit to the account. (The date need not be provided if a delay in crediting does not result in any finance or other charge.) (226.7(c))
- d. Each periodic rate used to compute the finance charge, the range of balances to which each applies, and the corresponding APR.
Note, however:

A creditor is not required to adjust the range of balances disclosure to reflect the balance below which only a minimum charge applies

If no finance charge is imposed when the outstanding balance is less than a certain amount, no disclosure is required of that fact or of the balance below which no finance charge will be imposed

If a variable-rate plan is involved, the creditor shall disclose the fact that the periodic rate(s) may vary

**HOME EQUITY
LINES OF
CREDIT
(cont'd)**

**After Account
Opening (cont'd)**

If different periodic rates apply to different types of transactions, the types of transactions to which each periodic rate applies must also be disclosed

(226.7(d))

- e. The balance amount to which each periodic rate was applied and an explanation of how that balance was determined. If a balance amount was determined without first deducting all credits and payments, that fact and the amount of the credits and payments. (226.7(e))

- f. The amount of any finance charge debited or added to the account during the billing cycle, using the term "finance charge". The financial institution must individually identify and itemize the components of the finance charge to show:

The amount(s) due to the application of any periodic rates

The amount(s) of any other type of finance charge

NOTE: If there is more than one periodic rate, the amount of the finance charge attributable to each rate need not be separately itemized and identified.

(226.7(f))

- g. If a finance charge was imposed during the billing cycle, the APR(s) determined under Section 226.14 using the term "annual percentage rate". (226.7(g))
- h. The amounts, itemized and identified by type, of any charges other than finance charges debited to the account during the billing cycle. (226.7(h))
- i. The closing date of the billing cycle and the account balance on that date. (226.7(i))
- j. The date by which or period within which the new balance or any portion of it must be paid to avoid additional finance charges. (226.7(j))
- k. The address of the financial institution to be used for billing error notices.

Alternative: The address for billing error notices may be provided on a summary statement of billing rights substantially similar to the model form (G-4) in Regulation Z, Appendix G. (226.7(k))

**HOME EQUITY
LINES OF
CREDIT
(cont'd)**

**After Account
Opening (cont'd)**

TIL – Subsequent Disclosure Requirement

5. Determine when and how the financial institution furnished the last statement of billing rights to customers.

The financial institution shall mail or deliver the billing rights statement required by Section 226.6(d) at least once per calendar year, at intervals of not less than six months nor more than 18 months, either to all consumers or to each consumer entitled to receive a periodic statement under Section 226.5(b)(2) for any one billing cycle

Alternative: The financial institution may use the short form notice, a statement substantially similar to that in Regulation Z, Appendix G, with each periodic statement.

(226.9(a))

6. Review the financial institution's billing error resolution procedures, including the instructions, written or otherwise, received by personnel assigned responsibility for processing billing errors. (226.13)

7. Review billing error complaints received by the institution for any evidence or indications that the requirements of the billing error resolution procedures, including applicable time limits, were not followed. (226.13)

8. Determine if the financial institution made the necessary disclosures for supplemental credit devices and additional features as set forth under Section 226.9(b)(2).

9. If the financial institution changed the terms of any open-end credit accounts since the date of the previous compliance examination, determine whether the financial institution complied with the advance notice requirements. (226.9(c))

10. Determine whether the financial institution complies with the following limitations:

NOTE: If the initial HELC contract does not call for a repayment period, any later closed-end credit contract to pay off the outstanding HELC balance is not subject to these limitations.

**HOME EQUITY
LINES OF
CREDIT
(cont'd)**

**After Account
Opening (cont'd)**

- a. In a variable-rate HELC, changes in the APR must be based on an index that is available to the general public and not under the financial institution's control (for example, the financial institution is prohibited from using its own prime rate, cost of funds formula or otherwise imposing a rate at its own discretion) (226.5b(f)(1))
- b. The account must not be terminated and repayment of the balance must not be demanded in advance of the original term except under the following four circumstances:

There is fraud or material misrepresentation by the consumer in connection with the plan at any time, including during the application process, during the draw period, or during any repayment period

The consumer fails to meet repayment terms of the plan

The consumer's action or inaction adversely affects the financial institution's security for the plan or any right in the security

Federal law dealing with credit extended by a depository institution to its executive officers specifically requires that as a condition of the plan the credit shall become due and payable on demand, provided that the creditor includes such a provision in the initial agreement

(226.5b(f)(2))

- c. After the agreement has been entered into, account terms must not be changed except under the following five circumstances (in addition to the financial institution's ability to freeze the account or reduce the credit limit under d. below):

NOTE: Any change in terms under the permissible exceptions must not otherwise contradict the HELC provisions of Regulation Z. For example, the consumer could not contract in the initial agreement that, in the event the consumer is delinquent on a debt other than the HELC, the financial institution could automatically terminate the HELC.

The initial agreement provides that the financial institution may prohibit additional extensions of credit or reduce credit limit during period that the maximum APR is reached

A specified change will occur when a specific event takes place

**HOME EQUITY
LINES OF
CREDIT
(cont'd)**

**After Account
Opening (cont'd)**

The index or margin is changed because the original index is no longer available (The new index has a historical movement substantially similar to that of the original index, and the new index and margin would have resulted in an APR substantially similar to the rate in effect at the time the original index became unavailable.)

The consumer specifically agrees to a specified change in writing at the time of the change

Any changes that will unequivocally benefit the consumer

Changes made to the terms are insignificant

(226.5b(f)(3)(i) through (v))

- d. The credit limit must not be reduced and additional extensions of credit must not be prohibited except temporarily (for example, to the extent that circumstances continue) under the following eight circumstances: (226.5b(f)(3)(vi))

The financial institution is permitted to terminate the account under b. above

The value of the dwelling securing the plan declines significantly below the appraised value (for example, the value of the consumer's unencumbered equity, after the financial institution secures its lien on the dwelling, declines by 50% or more)

The consumer's financial circumstances change materially and the creditor reasonably believes that the consumer will be unable to fulfill the repayment obligations

The consumer defaults on any material obligation under the agreement (Material obligations are defined by the financial institution in the initial agreement but need not be included in the HELC disclosures.)

Government action precludes the financial institution from imposing the APR provided in the agreement

**HOME EQUITY
LINES OF
CREDIT
(cont'd)**

**After Account
Opening (cont'd)**

The priority of the financial institution's security interest is adversely affected by government action to the extent that the value of the security interest is less than 120% of the credit line (for example, that the value of the consumer's unencumbered equity plus the amount of the HELC financial institution's lien on the dwelling is less than 120% of the amount of the credit line)

The financial institution is notified by a regulatory agency that continued advances constitute an unsafe and unsound practice

The maximum APR is reached (See Official Commentary of Regulation Z.)

(226.5b(f))

11. Determine whether the financial institution mails or delivers written notice of adverse action to the consumer within three business days of reducing the consumer's credit limit or freezing the account and whether the notice contains specific reasons for the action.

(226.9(c)(3))

- a. If the adverse action notice requires the consumer to request reinstatement of the line, determine whether the financial institution responds appropriately when the consumer makes such a request.
- b. If the adverse action notice does not require the consumer to request reinstatement of the line, determine whether the financial institution monitors the account and responds appropriately when the conditions which caused the reduction in the credit limit or freezing of the account no longer exist.

TIL – Prompt Crediting of Payments

12. Determine where the financial institution receives payments and how they are processed.

13. Determine that the financial institution credits payments as of the date of receipt unless a delay in crediting does not result in the imposition of a finance or other charge. (226.10(a))

**HOME EQUITY
LINES OF
CREDIT
(cont'd)**

**After Account
Opening (cont'd)**

14. Determine that the financial institution credits merchant refunds to customers' accounts within three business days of receipt. (226.12(e)(2))

15. Determine that the financial institution credits any credit balances to consumer accounts, refunds such balances within seven business days of receipt of a written request, and refunds such balances in any event after remaining in an account more than six months. (226.11)

16. Review contractual and other documents used to establish open-end credit accounts to determine whether a security interest is or will be retained or acquired in the consumer's principal dwelling to secure advances under the open-end credit plan.

17. Review mortgage forms used by the financial institution for possible inclusion of "spreader clauses" that serve to make the mortgaged property security for possible future advances.

18. Where a security interest is retained or acquired and not waived, determine that applicable rescission procedures are followed, including the furnishing of the prescribed notice of the right to rescind and delay in the financial institution's performance. (226.15)

TIL – Consumer Credit Contract

19. A financial institution shall include in any consumer credit contract secured by a dwelling and subject to the Truth in Lending Act and this regulation the maximum interest rate that may be imposed during the term of the obligation when the annual percentage rate may increase during the plan.

Flood Insurance

1. Determine, for those transactions in which flood insurance was obtained, that such insurance has been maintained throughout the life of the loan. (339.3) **(Proposed Rule)**

**HOME EQUITY
LINES OF
CREDIT
(cont'd)**

**After Account
Opening (cont'd)**

Home Mortgage Disclosure

1. Determine if the financial institution recorded the loan transaction on the Loan Application Register (LAR) within 30 days after the end of each calendar quarter in which final action was taken.

NOTE: Disclosure on the LAR is optional for home equity lines of credit in which only partial proceeds are used for home improvement. The instructions for completing the LAR (Part 203, Appendix A - V) state in part:

"At your option, you may report data about home equity lines of credit—even if the credit line is not classified as a home improvement loan. If you choose to do so, you may report a home equity line of credit as a home improvement loan if some portion of the proceeds will be used for home improvement. If you report originations of home equity lines of credit, you must also report applications for such loans that did not result in originations."

(203.4(a))

**WORKPAPER
STANDARDS**

Standardized workpapers must be completed when reviewing compliance with Truth in Lending open-end credit. *Refer* to the Standardized Workpapers Appendix in this manual.



**FDIC LAW,
REGULATIONS
, & RELATED
ACTS**

Applicable Rules See the Reference area of the Closed-End Credit section of this manual.

**Advisory
Opinions** See the Reference area of the Closed-End Credit section of this manual.

**Statements of
Policy** See the Reference area of the Closed-End Credit section of this manual.

**DCA
MEMORANDA** See the Reference area of the Closed-End Credit section of this manual.

**FINANCIAL
INSTITUTION
LETTERS (FIL)** See the Reference area of the Closed-End Credit section of this manual.
